goods from discrimination. It denies to the state the right to tax these goods in common with domestic goods, and in fact results in discrimination in favor of foreign and against domestic products.

The unfortunate consequences of this mistaken theory have caused it to be limited. The meaning of the term "original package" has been restricted to the narrowest possible construction,[6] and the extension of the principle to goods brought from one state into another has been refused.[7] Moreover, the Supreme Court has recently upheld the constitutionality of a state tax upon the proceeds of the sale of goods imported in the original package, when those proceeds were retained in the state in the form of bank deposits and bills for collection and remitted to the foreign principal only after the import duties and the expenses of importation and sale had been paid therefrom. *People* v. *Wells*, Jan. 6, 1908. Apart from the nature of the goods, such a tax upon cash and notes as capital employed in a business within the state is undoubtedly valid.[8] And in this case, while the court admitted that the proceeds are not directly taxable,[9] it held that they obtained a situs in the state, since they were retained for purposes of the business, and were thereby mingled with other goods in the state, and that they accordingly became subject to taxation. Unless, therefore, such proceeds are in transit, their immunity from taxation ceases. It is interesting to note that a similar tax upon amounts receivable on bills given for sales of goods in the original package was held unconstitutional by a state court on the ground that it was a tax upon the proceeds of the sale, before the proceeds themselves had been realized.[10] The result of the present case, however, seems eminently sound. It is virtually a tax upon the business of importation. But there is no reason why such a business should not bear its proportionate share of the burden of taxation. Moreover the tax is in no way discriminatory against foreign commerce, and consequently is not a regulation of it.

EXTRA-TERRITORIAL EXTENT OF A STATE'S JURISDICTION IN PERSONAM. — Where a notice, a statutory substitute for a *subpœna duces tecum*, is served on a foreign corporation doing business within a state to produce certain corporation books formerly kept there, but at that time in another state, the very nature of jurisdiction seems to be involved. For the state, as sovereign, is in effect ordering the doing of an act in a foreign jurisdiction. The Supreme Court has recently decided, without discussion, however, that the state by its judicial officers is entirely competent to order this extra-territorial act and therefore can rightly punish disobedience as contempt. *Consolidated Rendering Co.* v. *Vermont*, 207 U. S. 541. This case is not alone in its readiness to assume that a state, as sovereign, has such a right.[1] If it exists as a right, however, it must be as part of the

---

[6] See 18 HARV. L. REV. 530.
[7] Woodruff *v.* Parham, 8 Wall. (U. S.) 123.
[8] New Orleans *v.* Stempel, 175 U. S. 309.
[9] Cook *v.* Pennsylvania, 97 U. S. 566
[10] Paul Gelpi & Bro. *v.* Treasurer, 48 La. Ann. 1535.

[1] State *v.* United Copper Co., 30 N. J. L. J. 309. Copies of Books or Entries: Erwin *v.* Oregon, etc., Co., 22 Hun (N. Y.) 566; Nat'l, etc., Co. *v.* Van Emden, 105 N. Y. Supp. 657. Partnership Books: Fleischmann *v.* Fleischmann, 31 N. Y. Misc. 216; Holly Mfg. Co. *v.* Venner, 86 Hun (N. Y.) 42. *Cf.* United States *v.* Tilden, 28 Fed. Cas. 174; Snow, etc., Co. *v.* Snow-Church Surety Co., 80 N. Y. Supp. 512.

sovereign's jurisdiction *in personam*. And since that jurisdiction is ordinarily administered by the sovereign himself in equity,[2] it would seem that the limits of jurisdiction in equity are also the limits of jurisdiction *in personam*. In equity, then, it is clear that when the parties are before the court the sovereign has the right, if the equity is clear, to order the defendant to convey land situated in a foreign jurisdiction;[3] to order the removal of a cloud on foreign title;[4] to require the cancellation and discharge of a void foreign mortgage;[5] or the strict foreclosure of a mortgage on foreign land;[6] or to order a sale of foreign land under a mortgage, if the person who has the power of sale is before the court.[7] It is to be observed that the jurisdiction *in personam* is valid in these cases because the person and the act ordered are intra-territorial. The act affects foreign land only because the sovereign of the situs has consented that a deed shall pass title, wherever made.[8] Equity courts would not have jurisdiction in any of these cases if livery of seisin were necessary by the law of the situs. Equity may also enjoin the defendant who is served within the territory of the sovereign from trespassing on foreign realty and from prosecuting an unconscionable foreign suit.[9] Whether this jurisdiction is by virtue of the implied consent of the foreign sovereign, or is a relic of personal jurisdiction, or exists because no affirmative act is commanded on foreign territory, does not seem clear. But equity may not by reason of the inherent right of the sovereign order a positive act in a foreign jurisdiction.[10]

To explain this limitation of the sovereign's personal jurisdiction, it has been suggested that it is self-imposed because the sovereign will act only in cases where his power can be exercised effectively, and that the area of effectiveness is the territory of the sovereign.[11] This explanation contains a half-truth, but it errs in its conception of jurisdiction. Power is not the test of jurisdiction, it is only attendant on jurisdiction. Jurisdiction over persons and things gives the sovereign power to make and administer decrees and laws concerning them within his territory. If jurisdiction were merely a question of power, its extent would be simply a question of fact; it would be commensurate with the physical power of the sovereign. But continual usurpation and aggression would mean the disorganization of legal systems; for law connotes order and stability, neither of which is possible unless nations sanction the inherent right of sovereigns to exercise jurisdiction over persons, things, and acts within their recognized territorial boundaries.[12]

But, as the mutual benefit of nations is promoted by intercourse, sovereigns are often willing to relax their complete territorial jurisdiction and consent to give effect to an act ordered by a foreign sovereign.[12] Moreover, in the American states the fact of federal union, the relinquishment of

---

[2] Langdell, Brief Survey of Equity Jurisd., 23.
[3] See Fall *v.* Fall, 113 N. W. 175 (Neb.).
[4] See Hart *v.* Sansom, 110 U. S. 151, 155.
[5] Williams *v.* Fitzhugh, 37 N. Y. 444.
[6] House *v.* Lockwood, 40 Hun (N. Y.) 532.
[7] Muller *v.* Dows, 94 U. S. 444.
[8] See 20 HARV. L. REV. 382, 392.
[9] See 15 HARV. L. REV. 579; Ames, Cas. on Equity Jurisd., 28n.
[10] Port Royal R. R. *v.* Hammond, 58 Ga. 523. See Picquet *v.* Swan, 5 Mason (U. S. C. C.) 35.
[11] Dicey, Conf. of Laws, 40.
[12] See Schooner Exchange *v.* M'Faddon, 7 Cranch (U. S.) 116. *Cf.* Picquet *v.* Swan, *supra*.

many of the prerogatives of sovereignty by the states, and their community of interests, are arguments for implying consent in interstate legal relations where, as between foreign sovereigns, express consent would be necessary to give the right to order the extra-territorial act. The principal case may rest on such implied consent. But, as this consent would be as broad as national policy might direct, its limits are uncertain and its very existence is disputable.

DEDICATION RESTRICTED BY THE DEDICATOR. — The doctrine of dedication is an anomaly in our law. Its existence is due to the public policy of giving effect to the intention of individuals to confer benefits upon the public.[1] But when a dedicator seeks to place restrictions on the land he dedicates, a conflict of interests is presented. This conflict may exist in regard to reservations or limitations in favor of the dedicator, or to conditions imposed on the gift.

Certain reservations are consistent with the public user, and are therefore permitted.[2] But limitations which would be inconsistent with such user raise the issue, shall the grant fall or the limitation be disregarded? Unfortunately the courts have frequently avoided the question by going to great lengths to find that no inconsistency existed. Thus, for example, a road may be closed at all times to coal-wagons alone, or for seven months in the year to everybody.[3] It is hardly necessary to comment upon the situation, if the user of many of our highways was thus limited. This attitude of the courts is comprehensible as a compromise between tenderness toward the dedicator and consideration for the public. Still it would seem preferable to be more ready to give effect to the public policy against such limitations, and to face the issue frankly. If the owner had both the *animus dedicandi*[4] and an intention to impose an inconsistent limitation, some cases say that no dedication results,[5] thus making predominant considerations of fairness to the individual. The more modern tendency, however, seems to be to say that the grant is good and that the limitation falls.[6] This result would appear to be more in keeping with the line of thought that found the claims of the public in these matters sufficiently strong to justify the creation of the doctrine of dedication. As an analogy pointing strongly this way, there is the holding that a wife loses her dower right in land dedicated by her husband without her consent, because "the public [right] shall be preferred before the private."[7] The rule that a limitation repugnant to a grant is void, furnishes another supporting analogy.[8]

---

[1] See Cincinnati *v.* White's Lessee, 6 Pet. (U. S.) 431, 434; Jersey City *v.* Morris, etc., Co., 12 N. J. Eq. 545, 562; 16 HARV. L. REV. 329.

[2] Noblesville *v.* Lake Erie, etc., Ry., 130 Ind. 1; Tallon *v.* Hoboken, 60 N. J. L. 212, 217.

[3] Stafford *v.* Coyney, 7 B. & C. 257; Hughes *v.* Bingham, 135 N. Y. 347. See also Arnold *v.* Blaker, L. R. 6 Q. B. 433. Further, these decisions seem inconsistent with the line of cases holding that the user must be for the whole public. Poole v. Huskinson, 11 M. & W. 827; Trustees *v.* Hoboken, 33 N. J. L. 13, 18.

[4] If in view of the limitation it is found that the owner did not have the *animus dedicandi*, the public acquires no rights. White *v.* Bradley, 66 Me. 254.

[5] Poole *v.* Huskinson, *supra;* see Stafford *v.* Coyney, *supra*, 260; Mercer *v.* Woodgate, L. R. 5 Q. B. 26, 31. But see Arnold *v.* Blaker, *supra*, 437.

[6] See Richards *v.* Cincinnati, 31 Oh. St. 506; Haight *v.* Keokuk, 4 Ia. 199, 210; Noblesville *v.* Lake Erie, etc., Ry., *supra*, 4; State *v.* Spokane, etc., Co., 19 Wash. 518, 532.

[7] Co. Lit. 31 *b*. See 20 HARV. L. REV. 407.

[8] 1 Tiffany, Real Property, 171; State *v.* Trask, 6 Vt. 355, 364.